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Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

SHAWN MICHAEL SKROPITS,
Petitioner,

v.

STATE OF OHIO,
Respondent.

On Petition for Writ of Certiorari to the Ohio Supreme Court

PETITION FOR WRIT OF CERTIORARI

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July 7, 2009

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QUESTION PRESENTED

Whether a law enforcement officer violates the Fourth Amendment of the United States Constitution when he or she intentionally leaves their jurisdictional boundaries for a misdemeanor offense he or she did not witness in violation of state statute, and subsequently makes a traffic stop and arrest outside of their jurisdictional limits.

PARTIES TO THE PROCEEDING

Petitioner:
Shawn Skropits

Respondent:
The State of Ohio

CORPORATE DISCLOSURE

There is no parent or publicly held company owning 10% or more of the corporation's stock named as a party in this matter.

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OPINIONS BELOW

The decision of the Ohio Supreme Court is reported at 882 N.E.2d 444, 117 Ohio St.3d and is reproduced in the Appendix herein at 1a. The decision of the Fifth District Court of Appeals is not officially reported but is available at 2007 WL 3171209 and is reproduced in the Appendix at 17a.

STATEMENT OF JURISDICTION

The Ohio Supreme Court entered judgment against the Petitioner in this matter on February 4, 2009. This Court's jurisdiction is invoked under 28 U.S.C. 1257(a). The Ohio Supreme Court's decision is in direct conflict with the Massachusetts Supreme Court's decision in Commonwealth v. LeBlanc, 551 N.E.2d 906, 407 Mass 70 (1990).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Fourth Amendment

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or

under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Statutes

Ohio Revised Code §2935.03, see Appendix C.
Ohio Revised Code §4549.02, see Appendix C.

STATEMENT OF CASE

Petitioner filed a Motion to Dismiss and/or Suppress with the Trial Court alleging that the police officer violated his rights under the Fourth and Fourteenth Amendment of the United States Constitution. After a hearing on January 30, 2007, the Trial Court denied the Petitioner's motion. Upon the Court's denial of his motion, Petitioner entered a plea of no contest and appealed the Trial Court's decision to the Ohio Fifth District Court of Appeals.

The Appellate Court reversed the finding of the Trial Court, finding that the police officer did violate the Petitioner's constitutional rights. The State of Ohio appealed to the Ohio Supreme Court who accepted jurisdiction to hear the matter. After review, the Ohio Supreme Court reversed the finding of the Fifth District Court of Appeals finding that the Petitioner's Fourth Amendment right was not violated. Petitioner now brings this matter before this Court.

On September 27, 2006, an East Canton Police Officer responded to a call regarding an automobile accident. (Supp. T. At 9). The witness at the scene explained that a red Ford Ranger pick-up truck had struck the rear of a full size van. (Supp.T. at 10). The driver of the van had approached the pick-up, exchanged words with the driver, and then drove off. (Supp.T. at 10). After the van left, the pick-up truck also drove away. (Supp. T. at 10). Upon arrival at the scene, the officer found some debris which appeared to be from a Ford Ranger. (Supp. T. At 11). Approximately ten minutes later, after the officer had left the scene and had returned to the Town Hall where he was also bailiffing, the officer received a

dispatch advising that a red Ford Ranger with a smashed front and headlights out was "hiding" in the area of the Old Coyote Restaurant which is located to the west approximately one-half mile outside of East Canton. (Supp. T. At 12).

The officer proceeded to the Old Coyote Restaurant, which is located in Osnaburg Township, however the vehicle was no longer in the area. (Supp. T. At 12-13, 20, 26-27). He found no evidence that the Ford Ranger had been there. (Supp. T. At 30-31). The officer checked a nearby trailer park without success. (Supp. T. At 28). The officer continued to drive west, further away from East Canton, in search of this vehicle. (Supp. T. At 13). The officer had received no new information that would indicate that the suspect vehicle would be found in this direction. (Supp.T. at 37).

The officer then made another stop, this time to check a car wash parking lot in Canton Township, when another motorist pulled up to him and complained of a westbound driver with no headlights who had nearly struck his vehicle. (Supp.T. at 14-15, 20). The officer drove back east until he encountered a Ford Ranger pick-up truck. (Supp.T. at 15). The officer then turned around and initiated a traffic stop. (Supp.T. at 15). The front end of the truck was damaged and the headlights were not on. (Supp.T. at 16). Adam Jones was driving the vehicle and the Petitioner, Shawn Skropits, was the only passenger. (Supp. T. At 17-18). Almost immediately following the officers approach, both individuals indicated that there were guns inside the vehicle. The Petitioner and the driver were subsequently arrested and charged.

The officer acknowledged at the suppression hearing that he was not in "hot pursuit" of any vehicle during this investigation. (Supp. T. At 25, 32). He also stated that he never tried to contact another department for assistance before he initiated the traffic stop. (Supp. T. At 29-30). Additionally, he had no reason to believe any felony had been committed. (Supp. T. At 36). The officer first stated that he was investigating a "hit skip accident." (Supp. T. At 20). Later he stated that he suspected the Petitioner of littering by leaving part of the vehicle in the roadway. (Supp.T. at 41). Finally, the officer admitted that, according to the only witness to the accident, the drivers of the two vehicles spoke briefly and the van left the scene first. (Supp.T. at 41). His continuing pursuit was based upon a hunch. (Supp.T. at 35).

ARGUMENT

Petitioner respectfully requests that this Honorable Court grant a Writ of Certiorari in this matter as the matter involves a substantial question of constitutional law regarding the authority of law enforcement officers and the limitations placed on their powers to restrict their jurisdictional boundaries. Courts are divided on whether a violation of the Fourth Amendment occurs and suppression warranted when an officer is outside their jurisdictional limits. Specifically, the decision of the Ohio Supreme Court in this matter is in direct conflict with the Massachusetts Supreme Court's decision in Commonwealth v. LeBlanc, 551 N.E.2d 906, 407 Mass 70 (1990) that determined that an officer's arrest outside of his jurisdiction and in direct violation of his statutory duties was a violation of the Fourth Amendment and all evidence must be suppressed. Compare People v.

Hamilton, 666 P.2d 152, 157 (Colo.1983) (extra-territorial arrest based on probable cause is reasonable) with United States v. Foster, 566 F. Supp. 1403, 1412 (D.D.C.1983) (when officer acts beyond jurisdiction the resulting deprivation of liberty is just as unreasonable as an arrest without probable cause) and Commonwealth of Pa. v. Fiume, 436 A.2d 1001, 1008, 292 Pa.Super. 54 (1981) (evidence obtained from extraterritorial arrest must be suppressed).

A law enforcement officer may detain an individual only upon an objectively reasonable suspicion that criminal activity has been or is in the process of being undertaken by an individual. Terry v. Ohio, 932 U.S. 1 (1968); Delaware v. Prouse, 440 U.S. 648 (1979). The focus is on whether the police officer has an "articulable and reasonable suspicion" that the individual was violating the law at the time the individual was observed. Berkemer v. McCarthy, 468 U.S. 420 (1984); State v. Fanning, 70 Ohio App.3d 648 (1990). Evidence obtained as a result of an illegal search must be excluded as fruits of such illegality. Mapp v. Ohio, 367 U.S. 463 (1961).

This Court has held that a passenger, as well as a driver, has standing to challenge the lawfulness of a traffic stop. Brendlin v. California, 551 U.S. 249, 127 S.Ct. 2400 (2007). Whether a particular search is unconstitutional depends on the specific facts of each case. State v. Robinson, 58 Ohio St.2d 278 (1979). "Only searches that are unreasonable in a constitutional sense mandate the suppression of evidence" pursuant to the exclusionary rule announced in Mapp. Kettering v. Hollen, 64 Ohio St.2d 232 (1980).

In general, an extraterritorial arrest by a municipal police officer for an alleged misdemeanor is not authorized under Ohio law. Kettering, supra at 233. The Ohio Legislature has enacted legislation to address territorial and jurisdictional issues related to police activity. R.C. 2935.03. Under this statute, an officer is only allowed to make an exterritorial arrest when it is done in "hot pursuit", the pursuit is initiated within the officer's jurisdiction, is immediately adjacent to the officers jurisdiction or the offense if a felony or misdemeanor of the first degree. Id.

The Officer in the present case had no reasonable suspicion to believe criminal activity was taking place outside of this jurisdiction. The propriety f an investigative stop must be viewed in light of the totality of the circumstances. State v. Bobo, 37 Ohio St.3d 117 (1988). Reasonable suspicion necessary to justify an investigatory stop requires that the officers must be able to point to "specific and articulable facts" warranting a rational belief that criminal behavior is imminent. Terry, supra at 21. A court cannot condone "intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches." Id. at 22.

In the present case, the Petitioner was stopped, questioned and searched in Canton Township. The East Canton Police were responding to a call concerning an accident "downtown" East Canton. Some ten (10) minutes later, the officer responded to a call that a vehicle matching the description of the vehicle of the Petitioner was parked in a parking lot in Osnaburg Township, just outside the municipal limits of East Canton, Ohio. The officer found no evidence of the vehicle in the lot after having searched the

premises and a nearby trailer park for this vehicle. No debris was found, not even tire marks in the gravel, indicating what direction the alleged vehicle had gone.

Without further incident or contact with any other witnesses, parties or evidence, the officer proceeded even further west into a third jurisdiction, Canton Township. There is no evidence in the record that the officer ever saw the suspect vehicle or had formulated a reasonable belief or suspicion that criminal activity was underway in Canton Township. Nevertheless, the officer continued west, almost two (2) miles from the science of the accident and two jurisdictions away when he was allegedly flagged down by an unknown motorist and told that a vehicle matching the Petitioners' had almost struck him.

When the officer initially responded to the call within his own jurisdiction, he believed that a traffic accident had occurred. Upon arrival, however, he learned that the parties had complied with the applicable law and exchanged information as required by R.C. 4549.02. The only other criminal act that the officer alleged he was investigating was littering. The officer then responded to a suspicious vehicle call outside of his jurisdiction and proceeded into yet a third jurisdiction. There is no reasonable explanation for the officers activity in traveling outside of his jurisdiction and into two others.

The officer in this matter did not witness any criminal activity in his jurisdiction. He did not witness any individual leaving the scene of an accident in his jurisdiction. He did not witness any evasive or questionable behavior by any individual in his jurisdiction. Further, he was not investigating any

felony matter. An officer must be able to articulate facts that justify their intrusion. Otherwise, the evidence subsequently seized must be suppressed. State v. Biehl, 9th Dist. C. A. No. 22054, 2004 Ohio 6532. At the point the officer crossed the limits of the jurisdiction and found no one in the parking lot in Osnaburg, he did nothing more than engage in a wild goose chase and followed a hunch unsupported by any reasonable articulable suspicion.

There were no circumstances at the point of the Officer's movement outside of his jurisdiction that can be reasonable articulated to justify his movement into Canton Township. Essentially, he had no right to be in that jurisdiction at the time of the traffic stop of the Petitioner. "An essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed". Horton v. California 496 U.S. 128, 135, 110 S.Ct. 2301 (1990). Not only must the officer be lawfully located in the place, "but he or she must also have a lawful right of access to the object itself." Id. The officer in this matter was not lawfully in the place upon which he came into contact with the Petitioner.

In pursuing this vehicle so far from his jurisdiction when the officer did not reasonably believe that any criminal activity had been or was in the process of being committed, the officer acted unreasonably and in violation of the Fourth and Fourteenth Amendments of the United States Constitution. "... [W]e are sensitive to the abuses that could follow an intentional or premeditated disregard of territorial limits. See People v. Wolf, 635 P.2d 213, 217 (Colo.1981). "Law

enforcement officers should not make excursions into other jurisdictions to ferret out crime...." Id. The officer in this matter did just that. The decision of the Ohio Supreme Court directly conflicts with those Courts that determined that the violation of an officer's jurisdictional boundaries alone can be a Fourth Amendment violation.

This Court should grant Petitioner's Writ of Certiorari.

Respectfully submitted,

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